

This Modification incorporates the following significant changes to contract DE-AC36-99GO10337:

I. Effective with the date of this modification the following changes are made to Section H SPECIAL CONTRACT REQUIREMENTS:

A. Clause H-17 INFRASTRUCTURE DEVELOPMENT is deleted.

B. Clause H-2 CORPORATE HOME OFFICE EXPENSES is deleted and replaced with the following:

H-2 CORPORATE HOME OFFICE EXPENSES

In an effort to encourage Corporate leadership and contribution to the overall activities of the Laboratory while ensuring that corporate home office expenses are properly allocated, MRI, NREL, and DOE representatives shall meet on an annual basis to discuss those activities the MRI shall perform during the year in support of NREL's FFRDC Mission and MRI's corporate obligations to NREL. The salary and benefit cost of work properly charged to the contract by corporate officials, including MRI's Internal Audit Group, in accordance with their approved time charging policies while working on NREL business from the home office(s) is considered allowable expense. Reasonable related travel and miscellaneous expenses properly charged to the contract are also considered allowable expenses as long as they conform to applicable regulations. MRI shall include these costs in their annual cost proposal and provide information other than cost or pricing data that is adequate to determine a fair and reasonable price. The total amount of this cost will be identified in the proposal as the line item titled "MRI Expenses & Internal Audit" in the IN-HOUSE OVERHEAD COSTS schedule of the proposal. The total proposed cost identified in this line item will be considered a ceiling amount. This ceiling amount may be adjusted with prior approval of the Contracting Officer. Actual costs will be reimbursed as incurred not to exceed this amount.

C. Clause H-23 COUNTERINTELLIGENCE IMPLEMENTATION is added as follows:

H-23 COUNTERINTELLIGENCE IMPLEMENTATION

Consistent with DEAR clause 970.5204-1 Counterintelligence (DEC2000) of this Contract the Contractor shall take all reasonable precautions in the work under this Contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes. To meet these requirements the Contractor will comply with DOE 475.1 Counterintelligence Program. All other provisions of Clause 970.5204-1 COUNTERINTELLIGENCE (DEC 2000) shall be implemented.

D. Section H SPECIAL CONTRACT REQUIREMENTS, TABLE OF CONTENTS, and the specific Contract Clauses have been renumbered to reflect the addition of Contract Clauses.

II. Effective with the date of this modification the following changes are made to Section I Contract Clauses:

A. Clause 952.235-71 RESEARCH MISCONDUCT is added to read as follows:

CLAUSE I.89 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

(a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the contracting officer, the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the contracting officer if an initial inquiry supports a formal investigation and, if requested by the contracting officer thereafter, keep the contracting officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the contractor will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the contracting officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) Objectivity and Expertise. The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) Timeliness. The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the contracting officer. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact,

whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) Definitions.

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

B. **CLAUSE I.93 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS** is deleted and replaced with the following to include guidance concerning records generated during the course of responding to allegations of research misconduct, therefore the clause is deleted and replaced with the following:

CLAUSE I.98 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-

reimbursement type if any of the following factors is present:

- (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
- (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
- (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

C. CLAUSE 970.5217-1 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005) is added to read as follows:

CLAUSE I.103 970.5217-1 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005)

- (a) Authority to Perform Work for Others. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.
- (b) Contractor's Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.
- (c) Conditions of Participation in Work for Others Program. The Contractor:
 - (1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;
 - (2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;
 - (3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;
 - (4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;
 - (5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;
 - (6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;
 - (7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;
 - (8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,
 - (9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:
 - (i) Sponsoring agency;
 - (ii) Total estimated costs;
 - (iii) Project title and description;
 - (iv) Project point of contact; and,
 - (v) Estimated start and completion dates.
- (d) Negotiation and Execution of Work for Others Agreement.
 - (1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with

non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.

(2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

- (e) Preparation of Project Proposals. When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.
- (f) Work for Others Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.
- (g) Annual Work for Others Report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Work for Others Activities under the contract.

D. Security Clauses 952.204-2 SECURITY; 952.204-70 CLASSIFICATION/DECLASSIFICATION; 952.204-73 FACILITY CLEARANCE; and 970.5204-1 COUNTERINTELLIGENCE are added to read as follows:

CLAUSE I.74 952.204-2 SECURITY (MAY 2002)

- (a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) *Regulations.* The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of

the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownership, Control or Influence.

- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
- (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

CLAUSE I.75 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately

classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

CLAUSE I.77 952.204-73 FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

- (c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

- (e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW
(PLEASE REVIEW BEFORE SUBMITTING)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

CLAUSE I.96 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

- (a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

D. Clauses I.117 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2000) (ALTERNATE II) (DEC 2000) and I.89 970.5203-1 MANAGEMENT CONTROLS (DEC 2000) have been deleted and replaced with the following:

CLAUSE I.123 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) (ALTERNATE II) (DEC 2000) (DEVIATION)

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the

contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.98, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.98, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

- (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.
- (i) **Internal audit. The contractor agrees to establish and maintain an internal audit activity and provide the following reports:**
 - (1) **Internal Audit Implementation Design.** Within thirty (30) days of contract award and each 5th year of contract performance or upon the exercise of any contract option or the extension of the contract, the contractor shall submit to the contracting officer an Internal Audit Implementation Design to include the overall strategy for audit activity. The Implementation Design will describe (i) the audit activity's placement within the contractor's organization including reporting requirements; (ii) its size and the experience and educational standards of the audit staff; (iii) its relationship to the corporate parent(s) of the contractor; (iv) the standards used to audit; (v) an overall audit strategy for relevant performance period of this contract, considering particularly the method of auditing costs incurred in the performance of the contract; (vi) the intended use of external audit resources; (vii) the plan for audit, both pre-award and post-award of subcontracts; and (viii) the schedule of peer review of the internal audit activity by other DOE contractor internal audit activities.
 - (2) **Annual Audit Report.** By each January 31 of the contract performance period, the contractor shall submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year and their results.
 - (3) **Annual Audit Plan.** By each June 30 of the contract performance period, the contractor shall submit to the contracting officer an annual plan that reflects the activities to be undertaken during the next fiscal year. The contractor shall design the Annual Plan to test the costs incurred and contractor management systems described in the Internal Audit Design.
 - (4) **Contracting Officer's Satisfaction.** The design of the internal audit activity submitted under subparagraph (1), the annual report submitted under subparagraph (2), and the annual audit plan submitted under subparagraph (3) shall be satisfactory to the contracting officer.
 - (j) **Statement of Cost Incurred and Claimed.** At any time during contract performance, should the contracting officer determine that the costs incurred are unallowable to an extent to cause him or her to lose confidence in the contractor's management controls or the contractor's management systems that validate the costs incurred and claimed, the contracting officer may, in his or her sole discretion, impose conditions upon the contractor's use of the special financial institution account or use of the Statement of Costs Incurred and Claimed in whole or in part, including direction that specific types of cost be claimed by periodic vouchering. This action shall not relieve the contractor from any obligation to perform its

obligations under this contract. In addition, the contracting officer may direct the contractor to pay the Government an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided in this contract, at law, or in equity.

CLAUSE I.93 970.5203-1 MANAGEMENT CONTROLS (DEC 2000) (DEVIATION)

(a)(1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. **Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations that result from audits of business, financial, or management controls performed by its internal audit activity and any other audit activity.**

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

E. Section I CONTRACT CLAUSES, TABLE OF CONTENTS, and specific Contract Clauses have been renumbered to reflect the addition of new Contract Clauses.

II. SECTION J LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS, ATTACHMENT 5 OPERATING AND ADMINISTRATIVE REQUIREMENTS (LIST B) is deleted and replaced in its entirety with the following which reflects the incorporation of the following changes:

**Summary of Modifications to Attachment 5
Operating and Administrative Requirements**

Added	DOE M 205.1-1 CRD Incident Prevention, Warning, and Response (IPWAR) Manual	CRD applicable in whole
Added	DOE M 205.1-2 CRD Clearing, Sanitization, and Destruction of Information Storage Media, Memory Devices, and Related Hardware Manual	CRD applicable in part
Deleted	DOE N 205.12 CRD Clearing, Sanitizing, and Destroying Information System Storage Media, Memory Devices, and Other Related Hardware	CRD applicable in part
Extended	DOE N 205.2 CRD Foreign National Access to DOE Cyber Systems DOE N 205.16, dated 09/15/05, extends this directive to 09/30/06	CRD applicable in whole
Extended	DOE N 205.3 CRD Password Generation, Protection, and Use DOE N 205.16, dated 09/15/05, extends this directive to 09/30/06	CRD applicable in whole
Deleted	DOE N 473.8 Security Conditions	CRD applicable in whole
Added and Extended	DOE N 473.9 CRD Security Conditions DOE N 251.64, dated 07/07/05, extends this directive until 07/07/06	CRD applicable in whole
Added	DOE O 475.1 CRD Counterintelligence Program	CRD applicable in whole
Deleted	DOE O 481.1B CRD Work for Others (Non-Department of Energy Funded Work)	CRD applicable in whole

**SECTION J – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS
ATTACHMENT 5**

OPERATING AND ADMINISTRATIVE REQUIREMENTS (LIST B)

Prime Contract No. DE-AC36-99GO10337

The operating and administrative requirements, including the Contractor Requirements Documents of DOE directives listed below are applicable in whole or in part in accordance with clauses H-19 Application of DOE Contractor Requirements Documents and 970.5204-2, Laws, Regulations, and DOE Directives (DEC 2000). The concurrence analysis documenting applicability for each requirement below is maintained in the DOE Master File as well as any assurances as required by Clause H-19, are made a part of this Contract by reference and are managed through a formal change control process.

Operating and Administrative Requirements	Applicability
DOE O 110.3 CRD Conference Management Approved: 11/03/99	CRD applicable in whole
DOE O 130.1 CRD Budget Formulation Approved: 09/29/95	CRD applicable in whole
DOE O 142.3 CRD Unclassified Foreign Visits and Assignments Program Approved: 06/18/04	CRD applicable in whole
DOE O 151.1B CRD Comprehensive Emergency Management System Approved: 11/01/00	CRD applicable in whole
DOE O 200.1 CRD Information Management Program Approved: 09/30/96	CRD applicable in whole
DOE N 203.1 CRD Software Quality Assurance Approved: 10/02/00	CRD applicable in whole
DOE O 205.1 CRD Department of Energy Cyber Security Management Program Approved: 03/21/03	CRD applicable in whole
DOE M 205.1-1 CRD Incident Prevention, Warning, and Response (IPWAR) Manual Approved: 09/30/04	CRD applicable in whole
DOE M 205.1-2 CRD Clearing, Sanitization, and Destruction of Information Storage Media, Memory Devices, and Related Hardware Manual Approved: 06/26/05	CRD applicable in part

Operating and Administrative Requirements	Applicability
DOE N 205.2 CRD Foreign National Access to DOE Cyber Systems Approved: 11/01/99 DOE N 205.7, dated 02/12/04, extends this directive until 08/12/04 DOE N 205.16, dated 9/15/05, extends this directive until 09/30/06	CRD applicable in whole
DOE N 205.3 CRD Password Generation, Protection and Use Approved: 11/23/99 DOE N 205.7, dated 02/12/04, extends this directive until 08/12/04 DOE N 205.16, dated 9/15/05, extends this directive until 09/30/06	CRD applicable in part
DOE N 205.4 CRD Handling Cyber Security Alerts and Advisories and Reporting Cyber Security Incidents Approved: 03/18/02	CRD Applicable in part
DOE N 205.8 CRD Cyber Security Requirements for Wireless Devices and Information Systems Approved: 02/11/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.9 CRD Certification and Accreditation Process for Information Systems Including National Security Systems Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.10 CRD Cyber Security Requirements for Risk Management Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.11 CRD Security Requirements for Remote Access to DOE and Applicable Contractor Information Technology Systems Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE O 221.1 CRD Reporting Fraud, Waste, and Abuse to the Office of Inspector General Approved: 03/22/01	CRD applicable in whole
DOE O 221.2 CRD Cooperation with the OIG Approved: 03/22/01	CRD applicable in whole
DOE O 225.1A CRD Accident Investigations Approved: 11/26/97	CRD applicable in whole
DOE M 231.1-1A CRD Environment, Safety and Health Reporting Manual Approved: 03/19/04	CRD applicable in whole

Operating and Administrative Requirements	Applicability
DOE M 231.1-2 CRD Occurrence Reporting and Processing of Operations Information Approved: 08/19/03	CRD applicable in whole
DOE O 241.1A CRD Scientific and Technical Information Management Approved: 04/09/01	CRD applicable in whole
DOE O 251.1A CRD Directives System Approved: 01/30/98	CRD applicable in whole
DOE O 350.1 Change 1 CRD(s) Contractor Human Resource Management Programs Approved: 09/30/96 Change 1: 05/08/98	CRD applicable in whole
DOE O 350.2A CRD Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area Approved: 10/29/03	CRD applicable in whole
DOE O 412.1 CRD Work Authorization System Approved: 04/20/99	CRD applicable in whole
DOE O 413.1A CRD Management Control Program Approved: 04/18/02	CRD applicable in whole
DOE O 413.3 Change 1 CRD Program and Project Management for the Acquisition of Capital Assets Approved: 10/13/00 Change 1: 01/03/05	CRD applicable in whole
DOE O 414.1B CRD Quality Assurance Approved: 04/29/04	CRD applicable in whole
DOE O 430.1B CRD Real Property Asset Management Approved: 09/24/03	CRD applicable in whole
DOE O 430.2A CRD Departmental Energy and Utilities Management Approved: 04/15/02	CRD applicable in whole
DOE O 443.1 CRD Protection of Human Subjects Approved: 05/15/00	CRD applicable in whole
DOE O 450.1 CRD Environmental Protection Program Approved: 01/15/03	CRD applicable in whole

Operating and Administrative Requirements	Applicability
DOE O 470.1 Change 1 CRD Safeguards and Security Program Approved: 09/28/95 Change 1: 06/21/96 DOE N 251.53, dated 05/14/03, extends this directive until 05/14/04 Partial deletion by DOE O 471.4 Incidents of Security Concern. DOE O 471.4 Incidents of Security Concern partially deletes DOE O 470.1, Change 1, Safeguards and Security Program, by canceling Chapter VII, "Incidents of Safeguards and Security Concern" DOE N 251.63, dated 05/11/05, extends this directive until 05/11/06	CRD applicable in part
DOE O 470.2B CRD Independent Oversight and Performance Assurance Program Approved: 10/31/02	CRD applicable in whole
DOE O 471.4 CRD Incidents of Security Concern Approved: 03/17/04	CRD applicable in part
DOE O 473.1 CRD Physical Protection Program Approved: 12/23/02	CRD applicable in part
DOE M 473.1-1 CRD Physical Protection Program Manual Approved: 12/23/02	CRD applicable in part
DOE O 473.2 CRD Protective Force Program Approved: 06/30/00	CRD applicable in part
DOE N 473.9 CRD Security Conditions Approved: 07/08/04 DOE N 251.64, dated 07/07/05, extends this directive until 07/07/06	CRD applicable in whole
DOE O 475.1 CRD Counterintelligence Program Approved 12/10/04	CRD applicable in whole
DOE N 481.1A CRD Reimbursable Work for Department of Homeland Security Approved: 04/21/03 DOE N 251.56, dated 04/20/04, extends this directive until 04/20/05	CRD applicable in whole
DOE O 482.1 CRD DOE Facilities Technology Partnering Programs Approved: 01/12/01	CRD applicable in whole
DOE O 483.1 CRD DOE Cooperative Research and Development Agreements Approved: 01/12/01	CRD applicable in whole
DOE O 522.1 CRD Pricing of Departmental Materials and Services Approved: 11/03/04	CRD applicable in whole

Operating and Administrative Requirements	Applicability
DOE O 534.1B CRD Accounting Approved: 01/06/03	CRD applicable in whole
DOE O 551.1B CRD Official Foreign Travel Approved: 08/19/03	CRD applicable in whole

IV. The following Revisions have been made to Section J List of Documents, Exhibits and Other Attachments.

A. Attachment 7, Personnel (Appendix A) has been revised as follows:

1. Section 3 Pay Policies, Subsection 6 Compensation Procedures and Guidelines is deleted and replaced with:

6. Compensation Procedures and Guidelines

- a. Prior to any official compensation offer, the proposed compensation should be reviewed to ensure that it meets the guidelines of this Appendix, is internally equitable, and competitive with the external market.

No employee shall be paid more than the band maximum for the position without approval of the Laboratory Director and the Contracting Officer.

- b. Compensation ranges will be established for all pay groups based upon external and internal considerations. These will be reviewed annually and adjusted as necessary (when approved by Contracting Officer) to reflect changed economic conditions in the appropriate labor markets. Survey data shall be obtained at least biannually and be sufficiently comprehensive to permit valid comparisons to compensation paid by organizations competing with the Laboratory for labor.
 - c. To assure that individual increases are reasonable, compensation increase decisions shall give appropriate consideration to employee performance levels, internal equity, compensation range position, and labor market comparisons. The amount and timing of prior increases will also be considered, with prorating of increases when appropriate.
- (1) A merit increase is an increase in compensation for performance in the position held at the end of the performance period for which such increase is awarded.

The salaries of new regular employees will be reviewed on the annual compensation increase effective date immediately following their hire date. An employee with less than one year of service may be eligible to receive a pro-rated increase on the annual compensation increase effective date.

The annual effective date of the merit increase shall be the first pay period beginning on or after January 1.

- (2) A promotion increase will be granted upon assignment to a position with significantly increased duties and responsibilities and/or higher market rate. A promotion normally involves movement to a higher salary band; however, movement to a job in a different job family in the same band also may be considered a promotion.
- (3) An adjustment increase is defined as any change in the base rate, other than an increase for merit or promotion, to correct for compensation inequity or for career growth in a salary band.

- 2. Section 10 Employee Programs Subsection 5 Professional Dues and Licenses is deleted and replaced with:

5. Professional Dues and Licenses

The Contractor may approve the payment of an employee's trade, technical and professional activity costs such as dues and fees for membership in a professional organization or society, professional licenses, and subscriptions to trade, business, professional, or other technical periodicals. These should be job related and enhance the professional development of the employee, or is seen as a benefit to the Laboratory.

- 3. Section 11 Travel and Relocation Subsection 8 Research Participant Program Relocation and Housing Allowance is deleted and replaced with:

8. Research Participant Program Relocation and Housing Allowance

RPPs will be reimbursed for travel (transportation only) to their assigned duty station site as designated below:

- a. Undergraduate and Graduate students shall be reimbursed one time for reasonable round-trip transportation, at the lowest available coach class airfare, when they reside outside a 50-mile radius from the Laboratory. If an undergraduate or graduate student elects to travel by private automobile, an allowance at the Laboratory approved rate will be paid for actual mileage for the most direct route, but not to exceed the equivalent lowest coach class airfare.
- b. Senior Research Associate and Sabbatical participants shall be reimbursed for transportation from the original location to the assigned duty station when the permanent residence is more than 50 miles away from their assigned duty station, at the lowest available coach class airfare, up to a maximum of \$1,000, for self, and if applicable spouse and children. If a participant elects to travel by alternative transportation, reimbursement will not exceed the equivalent lowest available coach class airfare.
- c. Research Associates and Post Doctoral researchers shall be reimbursed for transportation from the original location to the assigned duty station when the permanent residence is more than 50 miles away from their assigned duty station, at the lowest available coach class

- airfare, up to a maximum of \$500, for self, and if applicable spouse and children. If a participant elects to travel by alternative transportation, reimbursement will not exceed the equivalent lowest available coach class airfare.
- d. Housing Allowance: RPPs listed below may receive a monthly allowance if the following circumstances are met: (1) the individual's permanent residence is more than 50 miles away from the Laboratory, and (2) the individual is maintaining two residences during his/her temporary assignment at the Laboratory. Verification of dual residences will be required upon arrival at NREL and annually thereafter. Any rent received from residence at the original location shall offset housing allowances received for the temporary site.
- (1) Post Doctoral Research and Research Associate participants will receive up to \$360 per month for the individual or up to \$520 per month for self, spouse, and dependent children.
- (2) Senior Research Associate participants will receive up to \$600 per month for the individual or up to \$750 per month for self, spouse, and dependent children.
- (3) Sabbatical participants, depending on amount of financial support provided by the home organization, government agency or through other recognized programs, may receive up to \$360 per month for the individual or up to \$520 per month for self, spouse, and dependent children. A Sabbatical participant with 12 years or more of experience will receive up to \$600 per month for the individual or up to \$750 per month for self, spouse and dependent children.
4. Section 11 Travel and Relocation Subsection 10 Relocation Expenses for New Employees is deleted and replaced with:

10. Relocation Expenses for New Employees

Relocation costs incidental to the transfer of a newly recruited employee to Laboratory facilities shall be subject to the relocation allowances detailed in the FTR for New Appointees Assigned to First Official Duty Station in addition to those allowances as specified below, and that are not otherwise unallowable under the provisions of the Contract.

a. House-Hunting Trip

An employee moving to a new location may be allowed one house-hunting visit up to a maximum of 5 days, which is included in the separate cumulative totals of 60 days for employees and/or for spouses and dependents allowed for interim living expenses. The normal, actual costs of transportation, coach class airfare, (the Laboratory will obtain, when available, the lowest cost service), or automobile mileage (at the Laboratory rate per mile, not to exceed the total cost of coach class airfare). Reasonable and actual cost of lodging up to the maximum lodging locality rate and M&IE locality rate as permitted by the FTR will be paid in lieu of actual expenses for meals, tips, personal luggage handling fees, and small miscellaneous travel cost items, for the husband and wife only. The per diem allowance is not paid for any personal stopovers enroute. Daily local mileage should not exceed 200 miles per day.

b. Interim Living Expenses

The Contractor recognizes that there are times when an employee is required to live in temporary housing such as a motel/hotel, or apartment while permanent housing is being completed. Therefore, reasonable and actual costs of lodging as permitted in the FTR and an M&IE allowance in lieu of actual expenses for meals, tips, and small miscellaneous items shall be paid. The M&IE allowance for each employee, spouse, and children is at the rate for the locality per day or 24-hour period for:

Per Diem	Employee	Spouse (unaccompanied)	Spouse (accompanied)	
1 st 30 days	100%	100%	75%	
2 nd 30 days	75%	75%	50%	

Employees will be encouraged to locate in an apartment if their stay in a motel/hotel exceeds seven (7) days, but the apartment must be for temporary housing only. The Contractor will pay the above costs in an apartment only if obtained for temporary purposes. No allowance shall be made for charges relating to real estate, mortgage, or leases. Reasonable and actual costs of long distance phone calls will be paid only if such calls are necessary to facilitate the process of relocations, and do not exceed two such calls of reasonable length per week.

c. Allowances for Moving

- (1) The Contractor will pay the reasonable and actual cost of packing, crating, moving and temporary storage, and insuring of employee's household goods and personal effects. The maximum allowable weight which may be moved is 18,000 pounds. If employees elect to move themselves, they will be reimbursed under the commuted rate system. Household goods are those items normally used inside the home to maintain or furnish a residence. Motorized and non-motorized vehicles, such as motorcycles, ATV's, boats, trailers, etc., and pets, plants, lumber, bricks or stones, satellite dishes, green houses, storage sheds, and similar items, are not considered household goods and therefore moving of such items will be the responsibility and expense of the employee, even if the total household goods shipment does not exceed 18,000 pounds. The move must occur within 12 months of initial employment and shall be covered from one point of loading to one point of unloading (except in the case of authorized storage).
- (2) Employees and their families will be reimbursed for actual costs of coach class airfare (the Laboratory will obtain, when available, the lowest cost service). If an employee elects to drive to the new location, total transportation reimbursement will be at the Laboratory rate per mile for one car, not to exceed the total coach class airfares for the most direct route for the number of immediate family members riding in the car. An M&IE allowance in lieu of actual expenses for tips, personal luggage handling fees, and small miscellaneous travel cost items shall be paid. The allowance for each employee, spouse, and child 12 years of age or older is the M&IE rate for the locality and 70 percent of the rate for each child under 12 years of age. The M&IE will be reimbursed at the standard pro-ration of 3/4 day on the first day and the last day of travel. The allowance will not be paid for any personal stopovers enroute. Reasonable and actual lodging up to the maximum lodging locality rate permitted by the FTR will also be paid. If the employee elects to drive, reimbursement shall be paid only for those days where traveling is in excess of 300 miles per day with the exception of

the first and last days unless otherwise approved by Human Resources and when a second car is necessary as transportation due to conflict of scheduling or when deemed necessary.

- (3) The normal and customary storage charges for household goods will be paid up to a maximum of sixty days for 18,000 pounds or less. Charges for access to these goods may be allowed only if necessary.

d. Miscellaneous Costs

An amount of \$1,000 may be paid to relocating employees in lieu of actual costs for other necessary and reasonable expenses such as disconnecting and connecting household appliances, automobile registration, driver's license, and use taxes, and forfeited utility fees and deposits. Receipts are not required.

e. Allowable Trips Home

Employees shall be allowed a maximum of one trip to the point they are moving from if members of the immediate family are still at that location. Any additional consideration for trips to the point of departure must be approved by Human Resources and the DOE Contracting Officer. Reimbursement of such trips will be limited to transportation expenses only.

f. Closing Costs on Sale of Residences

Costs associated with the sale of homes will be allowed for new employees hired in jobs in Salary Band 2 and above who were homeowners at their previous work locations, for up to 10 percent of the sale price of the property sold (before allowable gross up of the income taxable portion of these expenses), in accordance with the FTR, including but not limited to the following items:

- (1) Brokerage fees
- (2) Legal fees
- (3) Appraisal fees
- (4) Mortgage prepayment penalties
- (5) Mortgage satisfaction fees
- (6) Title insurance
- (7) Closing costs
- (8) Trustees fees
- (9) Escrow fees
- (10) Tax service fees
- (11) Termite inspection fees
- (12) Property inspection fees
- (13) Environmental testing fees

g. Ownership Costs

Continuing costs of ownership of vacant former actual residences being sold (before allowable gross up of the income taxable portion of these expenses), such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, etc., after settlement date or lease of new permanent residence shall be reimbursed. These costs in addition to the sales costs covered under section f. above will not exceed 14 percent of the sales price of the property sold. Costs incident to acquiring a home in a new location, except that 1) these costs will not be allowable for newly recruited employees who, before the relocation, were not homeowners, and 2) the total costs shall not exceed five percent of the purchase price of the new home.

h. Area Location

No reimbursement for relocation expenses will be made if the employee already resides in the metropolitan area in which the Laboratory facility is located. The metropolitan area shall be defined as within 50 miles of the Laboratory.

i. Recovery of Payments

The Laboratory shall inform the newly-hired employee in writing that if within 12 months after the hire date the employee resigns or is discharged for cause, the employee will be liable for return of all funds paid for relocation. The Laboratory shall be required to refund or credit such relocation costs to the DOE.

- B. In accordance with FAR 52.219-9, Attachment 2 “Small Business and Small Disadvantaged Business Subcontracting Plan” is deleted and replaced with the attached Attachment 2 “Small Business and Small Disadvantaged Business Subcontracting Plan” to reflect the revised FY06 goals.

IV. All other terms and conditions of the contract remain the same.